



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R04-OAR-2021-0370; FRL-9092-02-R4]

Florida; Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Emissions from Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a Clean Air Act (CAA) section 111(d) state plan submitted by the Florida Department of Environmental Protection (FDEP) on December 22, 2020, and supplemented on May 16, 2022. This state plan was submitted to fulfill the requirements of the CAA and is responsive to the EPA's promulgation of Emissions Guidelines (EG) and Compliance Times for municipal solid waste (MSW) landfills. The Florida state plan establishes performance standards and other operating requirements for existing MSW landfills and provides for the implementation and enforcement of those standards and requirements.

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register as of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R04-OAR-2021-0370. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information may not be publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are

available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. **FOR FURTHER INFORMATION CONTACT:** Tracy Watson, Communities and Air Toxics Section, Air Analysis and Support Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth St., SW, Atlanta, Georgia 30303. The telephone number is (404) 562-8998. Mr. Watson can also be reached via electronic mail at watson.marion@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The EPA published a notice of proposed rulemaking (NPRM) for the State of Florida on October 27, 2021 (86 FR 59336). In the NPRM, the EPA proposed the approval of a CAA section 111(d) state plan submitted by the FDEP on December 22, 2020. The EPA's analysis of the Florida state plan may be found in the aforementioned NPRM and the technical support document (TSD) associated with this docket. Comments on the EPA's proposed approval of the Florida state plan for existing MSW landfills were due on or before November 26, 2021. The EPA received one comment during the public comment period. The comment was unrelated to the NPRM.

II. Final Action

The EPA is finalizing approval of Florida's section 111(d) state plan for MSW landfills. The state plan was submitted in full compliance with the requirements of 40 CFR part 60, subparts B and Cf. Therefore, EPA is amending 40 CFR part 62, subpart K, to reflect this approval action. This approval is based on the rationale provided in the NPRM and discussed in further detail in the TSD associated with this rulemaking. The EPA's approval is in accordance with the general provisions of plan approval found in 40 CFR part 60, subpart B, and 40 CFR part 62, subpart A, and is pursuant to the Agency's role under 42 U.S.C. 7411(d). The EPA's approval of the Florida plan is limited to those landfills that meet the criteria established in 40

CFR part 60, subpart Cf, and grants the state authority to implement and enforce the performance standards and source requirements of the EG, except in those cases where authorities are specifically reserved for the EPA Administrator or his designee. Authorities retained by the EPA Administrator are those listed in 40 CFR 60.30f(c).

III. Incorporation by Reference

In accordance with requirements of 1 CFR 51.5, the EPA is finalizing regulatory text that includes incorporation by reference of Florida Administrative Code (F.A.C.) 62-204.800(9)(h), which became effective in the State of Florida on October 8, 2021.¹ The regulatory provisions of this section of the F.A.C. incorporate the CAA 111(d) state plan elements required by the EG for existing MSW landfills promulgated at 40 CFR part 60, subpart Cf. This incorporation establishes emission standards and compliance times for the control of air pollutants from certain MSW landfills that commenced construction, modification, or reconstruction on or before July 17, 2014. The emissions standards and compliance times established within the Florida state plan are at least as stringent as those required by the EG for existing MSW landfills subject to subpart Cf. The EPA has made, and will continue to make, these materials generally available through the docket for this action, EPA-R04-OAR-2021-0370, at <https://www.regulations.gov> and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). This incorporation by reference has been approved by the Office of the Federal Register and the plan is federally enforceable under the CAA as of the effective date of this final rulemaking.

IV. Statutory and Executive Order Reviews

In reviewing state plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as

¹ On May 16, 2022, FDEP submitted to EPA a request to incorporate by reference F.A.C 62-204.800(9)(h) with a state-effective date of October 8, 2021, instead of the June 15, 2020, version. The October 8, 2021, version includes the changes to the state rules described in the November 26, 2021, NPRM, specifically those outlined in the July 7, 2021, letter the FDEP sent to EPA modifying its original plan. Since the October 8, 2021, state-effective version encompasses those changes described in the NPRM and no additional changes, EPA agrees to incorporate by reference this version.

meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this approval of Florida’s state plan for existing MSW landfills does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000),

because the state plan is not approved to apply in Indian country located in the state, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days after date of publication in the FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 62

Administrative practice and procedure, Air pollution control, Environmental protection, Landfills, Incorporation by reference, Intergovernmental relations, Methane, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 5, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 62 as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart K—Florida

2. Revising the undesignated heading preceding § 62.2360 and § 62.2360 to read as follows:

Emissions From Existing Municipal Solid Waste Landfills—Section 111(d) Plan

§ 62.2360 Identification of sources.

(a) *Identification of plan.* Florida’s State Plan for Existing Municipal Solid Waste Landfills, as submitted on December 22, 2020, and supplemented on May 16, 2022. The plan includes the regulatory provisions cited in paragraph (d) of this section, which EPA incorporates by reference.

(b) *Identification of sources.* The plan applies to each existing municipal solid waste landfill in the State of Florida that commenced construction on or before July 17, 2014, as such landfills are defined in 40 CFR 60.41f and 40 CFR part 60.

(c) *Effective date.* The effective date of the plan is **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(d) *Incorporation by reference.* (1) The material incorporated by reference in this section was approved by the Director of the Federal Register Office in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the EPA and at the National Archives and Records Administration (NARA). Contact EPA at: EPA Region 4 office, 61 Forsyth St., SW, Atlanta, Georgia 30303, 404-562-9900. For information on the availability of this material at NARA, email fr.inspection@nara.gov or go to: www.archives.gov/federal-register/cfr/ibr-locations.html. The material may be obtained from the source in paragraph

(d)(2) of this section.

(2) *State of Florida – Department of State*. R.A. Gray Building, 500 South Bronough Street, Tallahassee, FL 32399-0250; phone:(850)245-6270; email:

AdministrativeCode@dos.myflorida.com; website: <https://flrules.org/>.

(i) F.A.C. 62-204.800(9)(h), Florida Administrative Code (F.A.C.) Department of Environmental Protection, Air Pollution Controls – General Provisions, Federal Regulations Adopted by Reference, effective October 8, 2021.

(ii) [Reserved]